IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Kalu alias Akram. Versus State of Rajasthan.

S.B. Criminal Jail Appeal No. 309/2002 against the judgment and order dated 27-3-2002 passed by the Additional Sessions Judge (Fast Track), Bhilwara, in Sessions Case No.104/2001.

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Date of Judgment: May 19, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR.

Mr. R.S. Chouhan, Amicus Curiae, for the appellant.
Mr. JPS Chaudhary, Public Prosecutor for the State.

BY THE COURT:

Appellant Kalu alias Akram has filed this appeal through jail challenging the judgment and order dated 27.3.2002 passed by the Additional Sessions Judge (Fast Track), Bhilwara (for short, "the trial Court" hereinafter) in Sessions Case No.104/2001, whereby the trial Court convicted the appellant for the offences under Sections 363, 366 and 376 IPC and sentenced him to undergo ten years rigorous imprisonment and a fine of Rs. 1000/- and in default of payment of fine further to undergo six months rigorous imprisonment for the offence under Section 376 IPC; five years rigorous imprisonment and a fine of Rs.500/-, in default of payment of fine further to undergo three months rigorous imprisonment for the offence under Section 366

IPC; and three years rigorous imprisonment and a fine of Rs.300/-, in default of payment of fine further to undergo two months rigorous imprisonment for the offence under Section 363 IPC. All the substantive sentences were directed to run concurrently. Aggrieved by the judgment and order impugned, convicting and sentencing the appellant, the appellant has filed the instant appeal through jail.

I have heard learned Amicus Curiae appearing for the appellant and the Public Prosecutor. Carefully gone through the judgment and order impugned, as also the record of the trial Court.

It is contended by the learned Amicus Curiae appearing for the appellant that the prosecution case does not find corroboration from the medical evidence. It is further contended that PW 1 the prosecutrix suffered injuries on her private parts by fall on the ground and, therefore, the trial Court fell in error in convicting and sentencing the appellant for the offences noticed-above.

Learned Public Prosecutor appearing for the State supported the judgment and order impugned and contended that from the statement of PW 1 the prosecutrix, as also the statement of PW 2 Smt. Rekha, the sister-in-law of the prosecutrix, to whom the prosecutrix narrated the incident soon after she was subjected to rape by the appellant, the prosecution

case stands fully established beyond reasonable doubt against the appellant. Learned Public Prosecutor submits that the garments, i.e. frock and the underwear, which the prosecutrix was wearing at the time of the occurrence, were found stained with blood and human semen and on being chemically analysed by the FSL, the semen found on these clothes was of human-origin and, therefore, there is a strong corroboration of the evidence of the prosecutrix , a minor girl of 9 years in age, who was subjected to forcible sexual intercourse, which, according to the learned Public Prosecutor, has been established beyond reasonable doubt from the evidence produced by the prosecution.

I have given my thoughtful consideration to rival submissions made by the learned counsel for the parties. I have carefully scrutinized, scanned and evaluated the evidence on record.

PW 1 the prosecutrix made the statement on 7-8-1999 before the trial Court stating her age as 10 years and a student of Class V. She stated that on 25-8-1998, while she was playing near Balaji's temple, the appellant called her, offered Rs.5/- and asked her to accompany him, to which she refused. Then the appellant forcibly took her to Shivalaya temple where there was no one. The appellant caught-hold her mouth, removed her undergarment i.e. Chaddi, led her on the ground

and penetrated his male-organ (penis) in her vagina, whereupon it started bleeding from her private parts. The appellant threatened her not to disclose the occurrence to any one, else she would be done to death. The appellant, after wearing his under-garment i.e. Chaddi, jumped up the wall and ran away. Thereafter she came weeping to her house and narrated the occurrence to her sister-in-law Bhabhi). Thereafter her mother and sister-in-law (Bhabhi) took her to a hospital, where she underwent the treatment. She stated that her Frock and underwear got stained with blood and semen. She has identified the appellant in the Court and stated that it was he who committed rape on her. She categorically stated that she has been knowing the appellant prior to the date of the occurrence as the appellant is a resident of the same locality and engaged in making boxes. The prosecutrix was subjected to lengthy cross-examination. Even in the cross-examination, PW 1 the prosecutrix could with-stand the statement made in the examination-in-chief and categorically stated that when she was subjected to rape, there was bleeding from her vagina and her garments fully stained with blood. She stated that when she was made to lay on the ground, some organ was penetrated in her vagina; however the prosecutrix was consistent to the effect that it was the appellant who removed her under-garments and thereafter penetrated his male-organ (penis) in her vagina and,

therefore, it started bleeding.

The appellant was put to test identification parade. PW 12 Mr. Shyam Sunder Lata, the then Judicial Magistrate, Kekri, conducted the test identification parade at the Central Jail, Bhilwara at the request EX.P/12 made by the Station House Officer, Police Station, Bhilwara. He categorically stated that the prosecutrix rightly identified the appellant vide identification parade EX.P/13. He categorically stated that as many as seven persons of the similar physique, age, structure and wearings were mixed and the prosecutrix, amongst them, correctly identified the present appellant. Even otherwise, the prosecutrix, in her statement, categorically stated that the appellant is the resident of the same locality and has been known to her for last five to six years. She stated that she also knows the brother and father of the appellant. Thus, so far as identity of the appellant is concerned, it has been established beyond reasonable doubt that it was the appellant who abducted PW 1 the prosecutrix, a minor child of 9 years and committed rape on her.

PW 2 Smt. Rekha, the sister-in-law of the prosecutrix, whom the prosecutrix narrated the occurrence soon after she was subjected to rape, stated that the prosecutrix, while she was playing, came weeping and stated that the appellant lured her by offering Rs.5/- and thereafter took her to

Shivalaya temple, caught-hold her mouth, removed her underwear (Kaccha) and thereafter committed a sin act and threatened her not to disclose the occurrence to any one, else she would be murdered. The prosecutrix, when came to the house, was having the clothes stained with blood. Her Frock and underwear were full of blood. The prosecutrix was taken to Mahatma Gandhi Hospital, Bhilwara where she was admitted and underwent the operation. This witness also with-stood the statement made in her examination-in-chief while she was subjected to cross-examination.

PW 3 Mitthu Lal, the father of the prosecutrix, stated the age of the prosecutrix as 9 to 10 years. He has proved the School Progress Card EX.P/2, wherein the Date of Birth of the prosecutrix has been mentioned as 30-5-1990. The occurrence took place on 25-8-1998. Thus, as per the statement of this witness and the statement of the prosecutrix, the age of PW 1 the prosecutrix on the date of occurrence was 8 to 9 years. He stated that while he was in the shop, a minor girl came and called him from the shop and when he came to home, he was informed of the occurrence by his wife, to whom the prosecurtrix narrated the occurrence.

Similar is the statement of PW 4 Gopal, the brother of the prosecutrix, whom the prosecutrix narrated the occurrence that the appellant, who is engaged in making boxes,

has committed rape on her and she also disclosed the place where the occurrence took place.

PW 7 Dr. Yashpal Singh examined the appellant and found him to be potent and capable of performing sexual intercourse.

PW 10 Dr. Sundari Devi, one of the Members of the Medical Board which examined the prosecutrix, stated that on 25-8-1998, at about 2:30 PM, the prosecutrix was admitted to Mahatma Gandhi Hospital, Bhilwara with the injury on vulva. There was a tear to second degree perineum on left side about one inch in size, bleeding from the private part and she was operated. She has proved the report EX.P/11. She has stated that when the prosecutrix was examined, there was bleeding from private parts and the injury was fresh.

Similar is the statement of PW 11 Dr. Rajendra Lodha, another Member of the Medical Board, who stated that the prosecutrix was admitted in the hospital on 25-8-98 at 2:30 PM and the injury on her vulva was found. He operated the vulva and repaired it. According to him, there was a perineum wound having the length of one inch. Thus, the doctor opined that there was a tear second decree on vulva having length of one inch. However, he could not say the exact time of rape committed on the prosecutrix.

There is evidence of the police witnesses, who seized

the undergarments of the prosecutrix, deposited the same in the Malkhana, carried the same to the FSL, seals thereon remaining intact till it reached the FSL etc.

The FSL report EX.P/27 shows that the Frock, on being serologically examined, was found stained with blood of human origin. Vide FSL report, the Frock and the Kaccha (underwear) which the prosecutrix was wearing at the time of the occurrence, on examined, were found stained with human semen as also the Kaccha (underwear) which the appellant was wearing, was found stained with human semen.

The appellant made statement under Section 313 Cr.P.C. and denied the allegation.

The trial Court, on appreciation of the evidence produced by the prosecution, came to the conclusion that on the relevant date of the occurrence, the prosecutrix was less than 12 years of age and from the statement of the prosecutrix, supported by the statements of PW 2 Smt. Rekha and other witnesses, as also from the medical evidence, the prosecution has proved the case beyond reasonable doubt against the appellant.

So far as insertion of organ in the vagina of the prosecutrix is concerned, the prosecutrix has categorically stated that it was the appellant who removed her under-garment, led her on the ground and penetrated his male-organ in her vagina,

by which it started bleeding from her private parts. This part of the evidence is consistent and finds corroboration from the medical evidence that there was a perineum tear of vulva having the length of one inch. It further finds corroboration from the fact that the Frock and underwear of the prosecutrix were found stained with blood of human origin as also found stained with the semen of human origin. There is no reason to disbelieve the statement of the prosecutrix, who, at the relevant time was a student of Class V and aged about 9 years. She has correctly identified the appellant in the test identification parade, which has been established by the statement of PW 12 Mr. Shyam Sunder Lata, the then Judicial Magistrate, Kekri, as also from EX.P/12. More so, the prosecutrix categorically stated that the appellant is known to her for last five to seven years as he is living in the same locality and used to make boxes. Mere on certain suggestion that some foreign body was inserted in her vagina, cannot demolish the prosecution case, which is consistent right from the statement of the prosecutrix and the other witnesses. The evidence of PW 2 Smt. Smt. Rekha is admissible in evidence as the prosecutrix, soon after the occurrence, on reaching the home weeping, informed the entire occurrence to her and, therefore, the statement of PW 1 the prosecutrix further finds support and corroboration from the statements of PW 2 Smt. Rekha, PW 3 Mithu Lal and PW 4

Gopal. It has also been established beyond reasonable doubt that on the relevant date of the occurrence, the prosecutrix was less than 12 years of age. The age disclosed by the prosecutrix in her statement has remained un-challenged in the cross-examination, as also her age disclosed by her father. More so, the age disclosed by the prosecutrix and her father finds corroboration from the School Progress Report EX.P/2.

In this view of the matter, in my view, the prosecution has proved the case beyond reasonable doubt against the appellant and, therefore, the trial Court was justified in convicting and sentencing the appellant for the offences noticed above. In view of the aforesaid discussion, I do not find any merit in the appeal.

Consequently, the jail appeal filed by the appellant fails and it is hereby dismissed. The judgment and order dated 27-3-2002 passed by the Additional Sessions Judge (Fast Track), Bhilwara in Sessions Case No. 104/2001, convicting and sentencing the appellant for the aforesaid offences, is affirmed.

(H.R. PANWAR), J.

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